BOIES, SCHILLER & FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: (702) 382-7300
Facsimile: (702) 382-2755
rpocker@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP
WILLIAM ISAACSON (*pro hac vice*)
KAREN DUNN (pro hac vice)
5301 Wisconsin Ave, NW
Washington, DC 20015
Telephone: (202) 237-2727
Facsimile: (202) 237-6131
wisaacson@bsfllp.com
kdunn@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP
STEVEN C. HOLTZMAN (*pro hac vice*)
BEKO O. REBLITZ-RICHARDSON (*pro hac vice*)
1999 Harrison Street, Suite 900
Oakland, CA 94612
Telephone: (510) 874-1000
Facsimile: (510) 874-1460
sholtzman@bsfllp.com
brichardson@bsfllp.com

MORGAN, LEWIS & BOCKIUS LLP
THOMAS S. HIXSON (*pro hac vice*)
JOHN A. POLITO (*pro hac vice*)
NITIN JINDAL (*pro hac vice*)
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: 415.442.1000
Facsimile: 415.442.1001
thomas.hixson@morganlewis.com
john.polito@morganlewis.com
nitin.jindal@morganlewis.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

Attorneys for Counterclaimant Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corporation

GIBSON, DUNN & CRUTCHER LLP
JEFFREY T. THOMAS (*pro hac vice*)
MICHELE L. MARYOTT (*pro hac vice*)
JOSEPH A. GORMAN (*pro hac vice*)
3161 Michelson Drive
Irvine, CA 92612-4412
Telephone: (949) 451-3800
Facsimile: (949) 451-4220
jtthomas@gibsondunn.com
mmaryott@gibsondunn.com
jgorman@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP
SAMUEL LIVERSIDGE (*pro hac vice*)
ERIC D. VANDEVELDE (*pro hac vice*)
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
sliversidge@gibsondunn.com
evandevelde@gibsondunn.com

HOWARD & HOWARD ATTORNEYS
W. WEST ALLEN (Nevada Bar No. 5566)
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
Telephone: (702) 667-4843
Facsimile: (702) 567-1568
wwa@h2law.com

DEBEVOISE & PLIMPTON LLP
JAMES J. PASTORE (*pro hac vice*)
919 Third Avenue
New York, NY 10022
Telephone: (212) 909-6000
jjpastore@debevoise.com

DEBEVOISE & PLIMPTON LLP
JEFFREY P. CUNARD (*pro hac vice*)
801 Pennsylvania Avenue N.W.
Washington, DC 20004
Telephone: (202) 383-8000
jpcunard@debevoise.com

RIMINI STREET, INC.
DANIEL B. WINSLOW (*pro hac vice*)
JOHN P. REILLY (*pro hac vice*)
6601 Koll Center Parkway, Suite 300
Pleasanton, CA 94566
Telephone: (925) 264-7736
dwinslow@riministreet.com
jreilly@riministreet.com

Attorneys for Plaintiff and Counterdefendant Rimini Street, Inc., and Counterdefendant Seth Ravin

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RIMINI STREET, INC., a Nevada corporation; Plaintiff, v. ORACLE INTERNATIONAL CORPORATION, a California corporation, Defendant.	Case No 2:14-cv-01699 LRH CWH **JOINT STATUS REPORT**
ORACLE AMERICA, INC., a Delaware corporation, *et al.*, Counterclaimants, v. RIMINI STREET, INC., a Nevada corporation, *et al.*, Counterdefendants.	

Plaintiff and Counterdefendant Rimini Street, Inc. and Counterdefendant Seth Ravin (together, "Rimini") and Counterclaimant Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corp. (together, "Oracle"; all parties collectively, "Parties," any party, "Party") submit the following joint status report.

I. AMENDED PLEADINGS

On October 24, 2016, Oracle filed its Second Amended Counterclaims (ECF No. 306), and Rimini answered on November 11, 2016 (ECF No. 324).

On December 5, 2016, Rimini filed a motion for leave to file its Second Amended Complaint. ECF No. 346; *see also* ECF No. 227 (order setting Dec. 5, 2016, as the "Last date to amend pleadings and add parties").

II. DISCOVERY PROGRESS

A. Documents Sought From and Produced By Rimini

1. Document Requests

Since the last status report, Oracle has served three sets of requests for production on Rimini Street:

- Oracle served its Seventh Set of Requests for Production to Rimini Street (comprising Request Nos. 186 through 195) on August 4, 2016. Rimini served its responses and objections on September 7, 2016.
- Oracle served its Eighth Set of Requests for Production to Rimini Street (comprising Request Nos. 196 through 210) on October 3, 2016. Rimini served its initial responses and objections on November 7, 2016, and served supplemental responses and objections on December 8, 2016.
- Oracle served its Ninth Set of Requests for Production to Rimini Street (comprising Request Nos. 211 through 224) on November 25, 2016. Rimini's responses and objections to Oracle's Ninth Set of Requests for Production are due December 30, 2016.[1]

[1] Oracle has also served three sets of Requests for Production on defendant Seth Ravin, totaling 51 requests.

Oracle continues to evaluate Rimini's responses to Oracle's First through Eighth Sets of Requests for Production, and many of the Requests from these sets are the subject of ongoing meet and confer discussions. Oracle moved to compel Rimini to produce documents in response to Oracle's Seventh Set of Requests for Production on November 3, 2016. ECF No. 320.

In April 2015, before either Party had served any requests for production, the Parties jointly proposed that both sides would have unlimited requests for production. ECF No. 48 (stipulated discovery plan) at 14.

Rimini disclosed on October 12, 2016 that it has not yet collected and reviewed Yahoo Instant Messages from any custodian in this matter. *See* Oct. 12, 2016 letter from E. Vandevelde to N. Herrera. Rimini employees used Yahoo Instant Messenger from 2006 or earlier through approximately 2015. Rimini has represented that it continues to investigate possible methods of collecting and producing these documents. *See* Dec. 7, 2016 letter from E. Vandevelde to N. Herrera.

2. Interrogatories

Since the last status report, Oracle served its Fourth Set of Interrogatories to Rimini Street (comprising Interrogatory Nos. 13 through 16) on October 7, 2016. Rimini served its responses and objections on November 10, 2016. The Parties are meeting and conferring regarding Rimini's responses.

No response to any interrogatory that Oracle has served on Rimini to date is currently outstanding, though certain responses are the subject of ongoing meet and confer discussions and motions to compel currently before the Court.

The Parties previously agreed that each side will have 35 interrogatories. July 13, 2015 Hearing Tr. at 29:5–9.

3. Document Productions – Centralized Data Sources

Rimini has produced almost a million non-custodial documents, including documents from SharePoint and Rimini's "Department Shares" data sources, comprising almost 13 million

pages (in addition to the over 5 million pages of custodial documents).[2] Rimini has also produced over 10 terabytes of other data from a number of complex and centralized sources, including: Avata, Salesforce, and Rimini's AFW tools; provided access to Rimini's DevTrack; and produced what the Parties refer to as Karen's Directory Printout ("KDP") data, which consist of directory and file structures, as well as metadata, for over 500 environments and client archives.

4. Document Productions – Custodial Productions and Technology-Assisted Review

Since the last joint status report was filed on May 5, 2016, both Parties have produced a number of custodial documents and engaged in a lengthy meet and confer process regarding various aspects of implementing the TAR Protocol (ECF No. 106, Ex. A). On July 28, 2016, the Parties agreed on the following "to-be-determined" percentages as they relate to the review of a "final acceptance sample" to validate the effectiveness of each Party's current TAR model: Oracle's "to-be-determined" percentage is 0.64% with a 0.22% error margin; and Rimini's corresponding "to-be-determined" percentage is 16.58% with a 2.0% error margin. *See* K. Papay July 28, 2016 Email to M. Cowing et al.; TAR Protocol at 4. Separately, the Parties agreed on how to apply their existing TAR models to new custodial data that was not included in either Party's initial Review Boundary at the time of the original seed set reviews. *See* K. Papay Sept. 7, 2016 Email to M. Cowing et al. (agreeing, among other things, to run separate final acceptance samples corresponding to new custodial data, but that separate seed set reviews would not be necessary); M. Cowing Sept. 13, 2016 Email to K. Papay et al. (confirming agreement).

Rimini's production of custodial documents under the current TAR model is ongoing.

a. Rimini's separate statement

Rimini so far has produced over 1.5 million custodial documents (over 5.3 million pages) from documents in the TAR I initial Review Boundary. Rimini will continue to review and

[2] Rimini also produced approximately one million documents (6.8 million pages) in *Rimini I*, that are deemed as having been produced in this litigation as well.

produce custodial documents (i) from later-collected custodial sources using the current TAR model and (ii) from all custodial sources based on new concepts of responsiveness not accounted for by Rimini's current TAR model. Rimini expects to complete its productions under the current TAR model for the documents in its initial Review Boundary in a timely manner, consistent with the agreed-upon deadline in the proposed case management schedule below.

5. Depositions

Since the last status report, Oracle has conducted four party depositions: two depositions of Rimini Street pursuant to Fed. R. Civ. P. 30(b)(6) (May 17, 2016 and June 16, 2016) and the individual depositions of Susan Tahtaras (Nov. 18, 2016) and David Rowe (Dec. 7, 2016).

Oracle has noticed the depositions of six additional Rimini witnesses. The deposition of Manjula Hosalli is scheduled for December 15, 2016. The remaining five depositions have been noticed for the following dates, but no agreed-upon date has yet been scheduled: Kevin Maddock (Feb. 9, 2017); Jim Benge (Feb. 23, 2017); Sebastian Grady (Mar. 9, 2017); Nancy Lyskawa (Mar. 23, 2017); and Seth Ravin (Apr. 6, 2017).

The Court previously granted each side ten party depositions, "absent further order from the Court upon a showing of good cause." Dec. 15, 2016 Hearing Tr. at 29:4–11.

B. Discovery Sought From and Produced by Oracle

1. Document Requests

Since the last status report, Rimini served its Fourth Set of Requests for Production to Oracle (comprising Request Nos. 154 through 160) on November 4, 2016. Oracle served its responses and objections on December 8, 2016. Certain other responses are the subject of ongoing meet and confer discussions and motions to compel currently before the Court.

2. Interrogatories

Since the last status report, Rimini served its Second Set of Interrogatories to Oracle (comprising Interrogatory Nos. 7 through 12) on November 4, 2016. Oracle served its responses and objections on December 8, 2016.

3. Document Productions – Centralized Data Sources

Since the last joint status report was filed on May 5, 2016, Oracle has produced more than 63,000 additional pages of non-custodial documents (including many documents in native format) from centralized data sources, including, but not limited to: Oracle income statements and financial reports; Oracle inter-entity agreements; software and support materials; copyright registrations and related deposit materials; customer-specific reports containing responsive information from Oracle's OKS database; customer-specific licenses and contract documents; terms of use; and, aggregate information regarding Oracle support cancellation rates for relevant products. Oracle continues to collect, review, and produce relevant non-custodial documents on a rolling basis.

4. Document Productions – Custodial Productions and Technology-Assisted Review

The Parties' meet and confer discussions related to the TAR protocol are described above. *See* Section II.A.4, *supra*.

Since the last joint status report was filed on May 5, 2016, Oracle has produced more than 203,000 additional pages of custodial documents pursuant to the TAR Protocol. Oracle's production of custodial documents from the custodial sources in its initial Review Boundary is substantially complete under the current TAR Model. *See* Nov. 30, 2016 letter from K. Papay to E. Vandevelde.

Oracle will continue to review and produce custodial documents (i) from later-collected custodial sources using the current TAR Model and (ii) from all custodial sources based on new concepts of responsiveness (based in part on both Oracle's responses to Rimini's additional document requests and on identified additional relevant customers) not accounted for by Oracle's current TAR Model.

5. Depositions

Rimini has noticed one deposition of Oracle pursuant to Fed. R. Civ. P. 30(b)(6). *See* Rimini's Amended Notice of Deposition Under Fed. R. Civ. P. 30(b)(6). Oracle objected to the Amended Notice on December 5, 2016. Subject to its objections, Oracle currently intends to designate two witnesses to testify regarding the topics in Rimini's Amended Notice. Deposition

of the first designated witness has been scheduled for December 13, 2016. *See* Rimini's Second Amended Notice of Deposition Under Fed. R. Civ. P. 30(b)(6). The Parties expect that deposition of the second designated witness will take place in January 2017. The Parties agree that, despite taking place over two days, this will count as only one deposition.

C. Third Party Discovery

1. Document Subpoenas to Rimini Customers

Subpoenas issued by Oracle. Oracle has issued subpoenas to 648 Rimini customers, and has received document productions from 388 customers in response. Oracle continues to meet and confer with Rimini customers on an ongoing basis regarding the scope of the subpoenas, the scope of document productions and their deficiencies, and (in some cases) the customer's objections to the subpoena.

Oracle produces the customer productions to Rimini after receipt, and to date has produced the documents of 332 customers to Rimini.

Subpoenas issued by Rimini. Rimini has issued subpoenas to 16 Rimini customers, and has received document productions from 5 customers in response.

2. Depositions of Rimini Customers

Third-party deposition protocol. The Parties are working under an agreed-upon protocol to govern certain aspects of depositions of Rimini customers and other third parties. *See* Nov. 9, 2016 letter from M. Lin to E. Vandevelde ("Oracle confirms that it will abide by the agreement previously reached, as it expects Rimini will do as well."). The terms of the protocol are embodied in correspondence between the Parties, and address items such as number and length of depositions, timing of the service of Rule 45 notices, and production of certain documents prior to depositions. *See* Oct. 17 and 24 letters from N. Herrera to E. Vandevelde; Oct. 19, 2016 letter from E. Vandevelde to N. Herrera. The Parties are working to memorialize this protocol in a stipulation that will be filed with the Court.

Oracle depositions. Oracle has conducted depositions of three Rimini customers: Media General, Inc. (Nov. 16, 2016); 3M Company (Nov. 21, 2016); and Easter Seals New Hampshire, Inc. (Dec. 1, 2016).

Oracle has noticed the depositions of two other Rimini customers, scheduled for the following dates: Snelling Holdings, LLC (Dec. 14, 2016); and SafeNet, Inc. (Dec. 19, 2016). The depositions of two other Rimini customers, American Electric Power Service Corporation and NCR Corporation, were noticed and then withdrawn, and have not yet been rescheduled.

Rimini depositions. Rimini has not noticed the deposition of any Rimini customer.

3. Document Subpoenas to Non-Customer Third Parties

Colbeck Capital Management. Oracle served a subpoena on third party Colbeck Capital Management, which is the subject of a motion to quash currently before the Court. *See* Case No. 3:16-cv-00543, ECF Nos. 2, 13, and 20.

4. Depositions of Non-Customer Third Parties

Rimini depositions. Rimini has noticed the deposition of Spinnaker Support, LLC. Spinnaker objected to the notice on November 25, 2016. Rimini seeks to re-schedule the deposition, as the original noticed date (December 9, 2016) was withdrawn.

III. THE PARTIES' POSITIONS ON CASE MANAGEMENT ISSUES

A. Proposal to Extend the Case Calendar, Increase the Number of Party Depositions, and Set the Number of Custodians

Rimini has proposed that the case calendar be extended as set forth below. Oracle has agreed not to oppose this request in light of Rimini's agreement (contingent upon the Court granting the proposal) that each side be permitted to conduct 25 party depositions (rather than 10 per side, the current limit) and that each side be permitted to name 50 document custodians (each party has currently agreed to 40 custodians, though no limit has been set). The proposed revised case schedule is as follows:

Event	Current Deadline	Parties' proposal
Last date to exchange final acceptance samples for TAR I as applied to the documents in the Initial Review Boundary for the first 35 custodians		January 17, 2017
Last date to serve requests for production calling for custodial documents		February 1, 2017

Event	Current Deadline	Parties' proposal
Last date to request new custodians		February 1, 2017
Parties collect documents for all new custodians and refresh e-mail collections for all other custodians		February 2 – 23, 2017
Parties tag seed sets for TAR II Model		February 24 – March 10, 2017
Parties exchange seed sets for TAR II Model		March 16, 2017
Parties complete meet and confer re TAR II Model seed sets exchange		April 6, 2017
Customer list freeze		May 8, 2017
Parties refresh e-mail collections for all custodians		May 8-19, 2017
Parties run and produce documents from TAR I model (as to documents outside the TAR I Initial Review Boundary, including all refreshed collections) and from TAR II Model		May 19 – September 15, 2017
Last date to produce custodial documents from TAR I and TAR II Models		September 15, 2017
Parties exchange final acceptance samples for TAR I and TAR II Models		October 2, 2017
Last date to file interim status report	December 19, 2016	November 28, 2017
Last date to serve interrogatories		December 1, 2017
Last date to serve requests for production calling for non-custodial documents		December 1, 2017
Close of fact discovery	April 13, 2017	February 28, 2018
Last date to file motions to compel related to fact discovery	May 15, 2017	March 28, 2018
Last date for affirmative expert disclosures	June 2, 2017	April 18, 2018
Last date to disclose rebuttal experts	July 21, 2017	June 6, 2018
Close of expert discovery	August 28, 2017	July 18, 2018
Last date to file dispositive motions	October 6, 2017	August 15, 2018
Last date to file joint pretrial order	November 13, 2017	September 19, 2018

The Parties will concurrently file a stipulation and proposed order to memorialize their agreement regarding the additional party depositions and document custodians, and to ask the Court to extend those of the above-listed dates that are the subject of Court's previous order regarding the case schedule. *See* ECF No. 227.

a. Oracle's separate statement

Absent Rimini's agreement to increase the number of party depositions and to set a 50-custodian limit, Oracle would oppose Rimini's proposed revised case schedule.

B. Request to Modify the Court-Ordered Weekly Meet and Confer Correspondence Schedule to Every Two Weeks

The Parties jointly request that the Court modify the existing meet and confer schedule (ECF No. 167 at 5:11-17) from a frequency of every week to a frequency of every other week. The current schedule requires the Parties to exchange issue letters by 3:00 p.m. PT on Mondays and to exchange response letters by 3:00 p.m. PT on Wednesdays. *Id.* The Parties have also instituted telephonic conferences on Thursdays to discuss the written correspondence. The Parties believe that the progress of discovery would improve if some of the attorney and internal company resources required by the weekly process were freed up to engage in the discovery process itself.

The Parties propose that beginning the week of December 19, 2016, and every two weeks thereafter, the Parties will continue to comply with the process that is currently in place (*i.e.*, an exchange of letters on Monday and Wednesday, and a telephonic meet and confer on Thursday), subject to change by mutual agreement of the Parties. This will allow the Parties to use the alternating intervening weeks to investigate and respond to discovery requests and engage in further discovery. The Parties' concurrently filed stipulation and proposed order concerning party depositions, number of custodians, and case calendar, discussed above, also addresses this jointly proposed change to the schedule for meet-and-confer correspondence. The Parties are also open to other approaches the Court deems just and proper.

C. Oracle's Request for Periodic Status Conferences and Dispute Resolution Briefing via Joint Status Reports

Oracle respectfully requests that the Court set regular status conferences at which discovery disputes can be resolved. In this action and the related *Rimini I* case, Magistrate Judge Leen held status conferences every month or two, and required the Parties to file joint status reports prior to each status conference that informally presented any case management or discovery disputes that require judicial resolution and updated the Court on the status of discovery. *See* Aug. 28, 2015 Hearing Tr. at 28:4-9. These status conference statements served as an alternative to formal motions to compel, and were an efficient and effective tool for managing discovery disputes between Oracle and Rimini. If the Court is amenable to such a process, Oracle believes that it would once again serve the case and the Parties well.

The federal rules and the local rules recognize that some complex civil disputes merit more active discovery management, and grant the courts substantial authority to shape the discovery process. *See* Fed. R. Civ. P. 16(c)(2)(F) & (L) (authorizing discovery oversight and special procedures for complex cases); Civ. L.R. 16-2 (authorizing requests for status conferences, "particularly" in complex cases); Civ. L.R. IB 1-3 (granting broad pretrial authority to magistrate judges). Oracle respectfully requests that the Court set status conferences at approximately two-month intervals through the close of fact discovery. In Oracle's experience, the Parties benefit from regular discussion of discovery progress and discovery disputes with the Court.

In *Rimini I*, only one of the ten joint status reports filed exceeded 35 pages in length. In the current matter, *Rimini II*, only two of the seven joint status reports filed under this protocol exceeded 50 pages in length. By comparison, the briefing on every motion to compel filed to date in *Rimini II* has exceeded 50 pages. Especially if the Parties resume their previous practice of submitting only key exhibits rather than every single potentially relevant document, the joint status report allows for appropriate resolution of disputes at regular intervals on a manageable record.[3]

[3] Rimini has asserted that past joint status reports were "unbridled and unwieldy." ECF No. 343 at 3. This is inaccurate. The filing "in excess of 500 pages" about which Magistrate Judge Leen complained, *id.* (citing ECF No. 166 at 5:1-4), included an 84-page joint status report (admittedly the longest such joint status report filed to date), ECF No. 156; a two-page

In *Rimini I* and *Rimini II*, exchanges of draft joint statement sections often served as a catalyst for compromise; with some frequency, a Party would drop a disputed issue after the exchange of draft written sections. As well, no Party ever asked Judge Hicks to reject or overrule Magistrate Judge Leen's resolution of discovery issues through this informal process. Though the Parties have litigated both cases intensely, informal resolution of discovery disputes through the joint status report process has simplified discovery and met the needs of the case.

As well, informal resolution of discovery disputes allows the Court to monitor the pace of Rimini's productions. Rimini's claim for declaratory judgment and Oracle's copyright infringement claims, alone, implicate every copy of Oracle software and support materials (including reproductions, distributions, and creation of derivative works) that Rimini has made, and reach almost all of Rimini's customers. As in *Rimini I*, Rimini has copied, and must produce, millions and millions of files, as well as communications about and technical documentation concerning those files; while Rimini has made some substantial productions relating to PeopleSoft, significant technical productions for PeopleSoft and almost all technical productions for other product lines are still outstanding, and Rimini has not yet completed its initial production (pursuant to the TAR protocol) of communications about technical files.[4] Because these unproduced files are foundational, serving as the basis for further discovery and analysis, delays in production can have a cascading effect on the overall discovery schedule. The Court previously required Rimini to provide regular updates regarding its technical productions by means of the joint status report process. *See* Jan. 12, 2016 Hearing Tr. at 43:17-20 (The Court: "I'm going to continue to hold status conferences every 30 days. Every 30 days I'm going to be asking Rimini why hasn't it finished producing what it knows I'm compelling them to produce.").

declaration, filed separately by Oracle, ECF No. 158; and, a declaration with 22 exhibits, filed separately by Rimini, that totaled 428 pages, ECF Nos. 154 & 157.

[4] Oracle's first pending Motion to Compel, ECF No. 256, addresses some of these outstanding productions.

Last, regular opportunities for informal discovery resolution help to ward against less-than-diligent engagement in meet and confer. The Court has previously admonished Rimini for falsely claiming that certain issues had not been the subject of appropriate meet and confer:

> [T]his is not, as you claim from the record before me, a litigation by ambush. The Court has been employing the status report process.
> The disputes -- and while I fully appreciate if this is an issue that they sprung on you two days before the status report was due, that would be an in -- inappropriate use of the status report process.
> The disputes that are before me right now have been discussed and rediscussed in a series of meet-and-confer conferences and raised in prior status reports with the Court for months now and with the subject of a prior motion to compel which Oracle withdrew as a result of the series of agreements that the parties reached in this case.
> So I do not at all regard this as litigation by ambush.

Dec. 15, 2015 Hearing Tr. at 4:8-23. Regular, informal representations to the Court about the scope of discovery and the issues of concern to each Party help to create a record by which the Court can assess whether disputes are ripe for review.

Oracle respectfully requests that the Parties resume informal resolution of disputes through the joint status reports and joint status conferences. Alternatively, if the Court has a different preferred method for resolving discovery disputes, Oracle would willingly participate in that method, as well.

D. Rimini's Opposition to Oracle's Request for Periodic Status Conferences and Dispute Resolution Briefing via Joint Status Reports

Rimini respectfully requests the Court maintain the status quo and allow the Parties to continue to resolve discovery disputes through the meet and confer process, coupled with normal motion practice for targeted issues that require the Court's intervention. Oracle offers no compelling reason to revert to a burdensome and inefficient status conference and reporting process that required the expenditure of significant time and resources preparing for frequent conferences and written submissions, time and resources that should instead be expended actually completing the discovery requests. The Parties are regularly meeting and conferring to

resolve discovery disputes, and only rarely involving the Court. The current system is not broken and need not be changed.

1. The Prior Process Resulted in Significant Burdens and Inefficiencies

In August 2015, Magistrate Judge Leen instituted a monthly status conference and reporting process in this case. ECF No. 99. Though well intentioned, this process became extremely burdensome and detracted from the Parties' discovery efforts. *See* Jan. 12, 2016 Hearing Tr. at 45:17-20 (Magistrate Judge Leen cautioned Oracle she would not allow a discovery schedule that would "kill" Rimini.) Preparation of the joint status reports required significant attorney and employee time, greatly reducing the resources available for the Parties to engage in the very discovery upon which they were asked to report. Then, in February 2016, Judge Leen instituted the weekly meet and confer process (ECF No. 167 at 5:11-17), which effectively replaced the monthly status conference process.

Under the prior monthly process, the joint status reports were burdensome and unwieldy, at times spanning "in excess of 500 pages" (ECF No. 166 at 5:1-4), and often encompassing multiple motions to compel raised while the Parties were still in the process of meeting and conferring to address those same discovery disputes. The Parties would thus appear at the status conferences having resolved many of the issues raised in the reports, rendering parts of the reports moot, having served only to document a process that was well on its way to resolution, thereby wasting the parties' time to prepare them and the Court's time to review them. *See* Feb. 24, 2016 Hearing Tr. at 7:3-5 (counsel for Oracle explaining "all the things that have been resolved as far as Oracle's motions to compel, based on the parties' work" between the time the status report was filed and the status conference was held); *see also id.* at 5:18-25 (counsel for Oracle explaining to the Court that the parties had "been continuing to work together" to resolve issues raised in the joint status report and had "resolved [multiple issues] between the parties").

This process also invited abuse, as Oracle used the reports to unfairly paint Rimini in a negative light when in fact the Parties' meet and confer was ongoing and Rimini was in the process of providing (or had already agreed to provide) Oracle the information it sought. *See*

ECF NO. 153 (Feb. 12, 2016 Joint Status Report) at 70 (Oracle compels production of Rimini databases despite the fact that "Oracle's investigation and review of Rimini's non-custodial database productions is ongoing"); *see also id*. at 81 (Rimini explains that "[d]uring the parties' meet-and-confer, Rimini agreed to investigate these issues . . . and [t]hese efforts are ongoing").

Oracle further took advantage of this process by raising these de facto motions to compel involving complex technical issues, and leaving Rimini only days—or sometimes just hours—to respond. *See* ECF No. 117 at 10-11 (joint status report in which Oracle served 27 pages of motions two days before filing, and added 14 *additional* pages of argument mere hours before filing, leaving Rimini no time to adequately respond). The discovery issues in this case are necessarily complex given, among other issues, the technology involved, and the Parties should be afforded the amount of time dictated by the Federal and Local Rules in which to fully brief these issues for the Court.

Rather than using their valuable time and resources to prepare unnecessary and lengthy reports to the Court on discovery progress, the parties should use that time and expense to meaningfully advance discovery progress. This is especially true where the amount of discovery in *Rimini II* is in various aspects double or nearly double the amount it was in *Rimini I*—for example, in RFPs propounded by Oracle (from 98 to 224 and counting), non-party depositions (from 20 to the now 35 per side), and documents produced by Rimini (from about 1 million in *Rimini I* to over 2.5 million under TAR alone in *Rimini II* to date). Rimini is committed to meeting its discovery obligations. Indeed, its internal and external discovery costs this year have exceeded $10 million. But reverting to monthly status conferences, with the reports and appearances that accompany that schedule, is not necessary to successful discovery in this case.

2. This Case Does Not Require Extraordinary Oversight

The Parties in this case are regularly meeting and conferring to address discovery disputes, and only rarely finding the need to involve the Court through normal motion practice. As discussed in Section III.B, the Parties are already complying with a regular and thorough meet and confer process. That process is working. The last status conference on discovery issues was held on April 5, 2016. ECF No. 200. In the more than eight months since that

conference, only three discovery disputes have been noticed for this Court's intervention. This is how it should be. There is no need for special Court involvement here, and a return to the prior conference schedule would only serve to burden the Court and the Parties, and to create inefficiencies that would detract from the necessary work of preparing this case for trial or settlement. Moreover, the substantial burden of regularly preparing joint status reports unfairly prejudices Rimini, given that Rimini shoulders an extreme and disproportionately large share of the discovery burdens in this case. *See* Section III.E. Rimini respectfully requests the Court order the Parties to continue to resolve discovery disputes through meet and confer, coupled with normal motion practice.

E. Rimini's Request for a Reasonable Limit on Requests for Production

The scope of discovery in this case is monumental. Rimini has produced *millions* of documents, as well as terabytes of data. And those productions are ongoing, as Rimini averages more than a production per week over the past year. To date, Oracle has served ***224*** requests for production ("RFPs") on Rimini, and has refused Rimini's request to set a limit on the number of RFPs each party may propound going forward. Absent reasonable boundaries, Oracle has taken an untargeted approach, demanding that Rimini respond to duplicative requests (in some cases identical, word-for-word to prior requests), and propounding requests that seek material that is cumulative of information Oracle has already received from Rimini and multiple other sources. *See* ECF No. 256 (Oracle's Motion to Compel); ECF No. 270 (Rimini's Opposition to Oracle's Motion to Compel) (requesting the same information from both Rimini and its clients). This approach significantly strains Rimini's resources and is not "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the Parties' relative access to relevant information, the Parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26. Rimini therefore requests that the Court impose a reasonable limit on RFPs—275 total per party—which is more than proportional to the

Parties' needs, and will ensure that the Parties take a judicious and thoughtful approach to document discovery.

1. Rimini Has Produced a Vast Amount of Discovery

For the Court's convenience, and so the Court may fully grasp the mammoth amount of discovery in this case, this section provides a summary of discovery conducted to date.

While Oracle litigated *Rimini I* using fewer than 100 RFPs, it has already propounded 224 in *Rimini II*.[5] Thus, while *Rimini I* involved four Oracle product lines, and *Rimini II* involves those same four, plus one more, for a total of five (only a 25% increase in scope), Oracle has already more than doubled its document requests, and has indicated that it will continue on this trajectory. On top of its RFPs, Oracle has also propounded incredibly burdensome interrogatories, requiring thousands of employee and attorney hours to complete. And because the Parties have agreed to 25 party depositions per side and up to 35 third-party depositions per side, there could—assuming the Court adopts the Parties' agreement—be up to 120 depositions in this case during the fact discovery period. This figure does not even include expert depositions.

Oracle's unbridled approach to RFPs has caused Rimini—Oracle's much smaller competitor—to produce almost 50 *times* the pages of written discovery that Oracle has in this case. ECF No. 329 (Rimini's Opposition to Oracle's Motion to Compel) at 20.[6] Rimini has been forced to hire new employees and contractors specifically to meet Oracle's discovery demands in this case and continues to work diligently to produce more. Based on these efforts, Rimini has produced over 2.5 *million* documents, totaling almost 18.2 *million* pages, plus over 10 *terabytes*[7]

---

[5] In addition to the 224 RFPs Oracle has served on Rimini, Oracle has issued more than *600* third-party subpoenas on Rimini's clients, often requesting the same information it seeks from Rimini. *See* ECF No. 256; ECF No. 270.

[6] By revenue and employee count, Oracle is approximately 227 and 147 times the size of Rimini, respectively. *Compare* Oracle's 2016 Form 10-K (available at http://investor.oracle.com/ financial-reporting/sec-filings/) (showing revenues of $37 billion); Oracle's Global Workforce, https://www.oracle.com/corporate/citizenship/workforce/index.html (touting a "workforce of more than 122,000 employees") *and* ECF 346-1 (Rimini Street, Inc.'s Second Amended Complaint) at ¶ 2 ("Rimini has . . . annual run-rate revenues of $163 million."); *id.* ¶ 3 ("Rimini has more than 830 active worldwide employees").

[7] A terabyte is a unit of data storage. Ten terabytes could hold the full printed collection of the Library of Congress. *See* http://www.whatsabyte.com/.

of other data (*e.g.*, environments and archives) in *Rimini II* alone.[8] ECF No. 329 at 4. (In contrast, Oracle has produced only approximately 73,000 documents, totaling only approximately 375,000 pages.) This is *in addition to* the over one million documents (approximately 6.8 million pages) Rimini produced in *Rimini I*, which is deemed responsive in *Rimini II*, and available to Oracle in this action. Thus, Oracle has almost ***25 million*** pages of document discovery and over ***10 terabytes*** of additional data from Rimini, and will collect much more from third parties.

And it doesn't end there. The vast majority of the documents Rimini has produced in *Rimini II* (approximately 1.6 of the 2.5 million) are custodial documents responsive to fewer than half the RFPs Oracle served to date. This is because, as Oracle knows, these requests have not yet been incorporated into the Parties' Technology-Assisted Review ("TAR") process. Once a new predictive coding model (or "TAR II" model) is established for the more than 100 additional RFPs that have not yet been accounted for in the first TAR model, and the custodians' documents are run through that model, Rimini will almost certainly have produced millions more pages of documents to Oracle and the gaping disparity in burdens will grow even more extreme. Further, Rimini has agreed to add ten more custodians, and will thus produce even more data—and on average to date, for each custodian added, Rimini is producing approximately 26 *times* the number of documents that Oracle is producing. Between the documents Rimini has produced in *Rimini I* and *Rimini II*, and the documents it will produce based on the 224 RFPs Oracle has propounded so far, Oracle already has ample material to argue its case. And if not, that is only because Oracle has not taken a targeted approach to RFPs, having taken for granted that it could serve as many as it wished.

In addition to the custodial documents that have been produced in this case, Rimini has also produced terabytes of non-custodial data, and given Oracle access to other sources containing the core discovery Oracle seeks in this case. ECF No. 329 at 4. These non-custodial sources include what the Parties refer to as Karen's Directory Printout ("KDP") data, which

[8] The numbers contained in this statement are accurate as of December 8, 2016.

consist of directory and file structures, as well as metadata, for over 500 environments and client archives. *Id.* They also include information from project management and data tracking systems used in the creation of client environments, including Avata, Salesforce, SharePoint, and Department Shares, as well as online access to DevTrack. *Id.*

2. The Burdens of Oracle's Approach Outweigh Any Benefit

Despite having an enormous volume of discovery at its fingertips (with more on the way), Oracle has refused to agree to a reasonable limit on the number of RFPs. Oracle has instead elected to take a reactionary and scattershot approach, pursuing any material even tangentially related to "Rimini's entire business model." ECF No. 318 at 2. To be clear, Oracle's position is *not* that the information must be related to the conduct at issue in this copyright infringement lawsuit; rather, Oracle believes it is entitled to any documents relating to Rimini, the business. *Id.*[9]

More troubling, however, is that Oracle has reached the point where it is serving requests that are entirely duplicative—in some cases identical—to prior requests Oracle has served in this case. For example, Requests 213 and 223 are exactly the same, *word-for-word*. Vandevelde Decl. Ex. C (compare RFP No. 213 with RFP No. 223). And *all* of the requests in Oracle's Seventh Set of RFPs seeking documents related to the Colbeck financing transaction are duplicative of prior requests. ECF No. 329 at 19. Oracle has even conceded that many of its requests are encompassed by prior requests. ECF No. 337 at 10-11; *see* ECF No. 318 at 12; Vandevelde Decl. Ex. B (Supp. Response to RFP No. 196). This untargeted approach is highly inefficient, requiring Rimini to consistently point Oracle to prior requests and documents it has

[9] Oracle's reactionary approach is clear from the timing and content of its RFPs. For example, shortly after Rimini announced that it secured financing from Colbeck Capital Management, LLC, Oracle sought "All Documents Concerning the transaction or transactions by which [Rimini] obtained th[at] financing" (RFP No. 186), including absurdly broad requests for Rimini's "financial information" (RFP No. 190), "business information" (RFP No. 191), "business model" (RFP No. 192), and documents relating to "litigation involving Oracle" (RFP No. 193). Vandevelde Decl. Ex. A.

already produced. It also shows that Oracle has largely—if not entirely—covered the waterfront with its prior RFPs.

There is no question that this case is large and important for both Parties, and indeed for the entire aftermarket software support industry. But Rimini has expended extraordinary time and expense to respond to the massive amount of discovery Oracle has sought in this case, and the limits of proportionality have been surpassed. Rimini thus requests a reasonable limit on RFPs. Such a limit will not curtail Oracle's ability to propound additional RFPs to address issues that arise in depositions, it will only ensure that Oracle use its requests more judiciously to more precisely target the information it purportedly needs to prove its case.

F. Oracle's Opposition to Rimini's Request to Limit The Parties' Requests for Production of Documents

Under the operative pleadings, Oracle accuses Rimini of massive theft of Oracle's IP and of improper statements to its current and prospective customers. Second Am. Countercl., ECF No. 306, ¶¶ 5-10. Rimini, for its part, requests a declaration that "Rimini's processes" do not infringe Oracle's copyrights. Am. Compl., ECF No. 61, ¶ 11. Both Oracle's and Rimini's claims focus on Rimini's actions. It is no wonder that Rimini's production dwarfs Oracle's in size: under the operative pleadings, Rimini's copying and many of its communications are relevant to disputed issues; for the most part, Oracle's documents are not.[10]

Rimini now seeks to prevent Oracle from obtaining additional categories of documents, including those relevant to newly arising case issues. Less than ten days after moving for leave to add five new claims for relief (in its proposed Second Amended Complaint, ECF No. 346-1), Rimini asks the Court to prevent Oracle, which has served 275 RFPs to date (224 on Rimini and 51 on Ravin) from seeking any additional categories of documents relating to those new claims.[11] Rimini's move to limit document requests comes less than a month after Oracle first

[10] *See also Rimini I*, Order, ECF No. 1049 (holding on entry of a permanent injunction against Oracle that "Rimini's business model was built entirely on its infringement of Oracle's copyrighted software.").

[11] Rimini's suggestion that the number of RFPs be limited "per party" makes no difference, as Oracle propounded each of its RFPs on behalf of both Counterclaimant Oracle America, Inc., and Defendant and Counterclaimant Oracle International Corporation.

learned, in a deposition of a Rimini employee, that Rimini claims to have again revamped its processes for providing support for Oracle software, purportedly to comply with the permanent injunction entered against Rimini and Ravin in *Rimini I*. *See, e.g.*, Decl. of Thomas S. Hixson, ¶ 4 & Ex. B (Deposition of Susan Tahtaras, Nov. 18, 2016, at 52:18-55:9 (changes to Rimini's processes for development), 80:13-82:1 (development now done "manually on the client's machine"), 95:14-96:14 (new employees hired, and others yet to be hired, because of the injunction)). Oracle is entitled to request documents concerning Rimini's post-injunction conduct.[12] Rimini's naked gamesmanship should not be rewarded; Rimini may not change the discovery framework at this late date.

1. Rimini's proposal to limit RFPs at this time is both procedurally improper and fundamentally unfair

At the outset of discovery, Rimini agreed with Oracle that "there should be no limit on the number of requests for production of documents" in this case. ECF No. 48 at 14:14-15 (stipulated discovery plan). "Because stipulations serve both judicial economy and the convenience of the parties, courts will enforce them absent indications of involuntary or uninformed consent." *CDN Inc. v. Kapes*, 197 F.3d 1256, 1258 (9th Cir. 1999). Rimini does not claim that its stipulation to unlimited requests for production was either involuntary or uninformed. Since requests for production were the only type of discovery where the Parties had complete agreement at the time that the stipulated discovery plan was filed, Rimini can hardly argue that it was compelled to agree. ECF No. 48 at 14:14-15:2. Oracle has reasonably relied upon the Parties' agreement for the better part of a year and a half in shaping its discovery strategy, and Rimini should not be permitted to withdraw unilaterally at this late date.

Nor has Rimini met its burden to obtain a protective order as to Oracle's future requests for production. To obtain a protective order that limits a party's ability to conduct discovery, a

[12] While Oracle has served initial document requests relating to this and other new categories of relevant documents based upon information first disclosed in the deposition of Rimini employee Susan Tahtaras, *see* Decl. of Eric D. Vandevelde, ¶ 4 & Ex. C (Oracle's Ninth Set of Requests for Production), Oracle should be permitted to seek further discovery on these issues if required.

party may not merely "show[] that discovery may involve some inconvenience and expense . . . . Rather, a party seeking a protective order must show a particular and specific need for the protective order, and broad or conclusory statements concerning the need for protection are insufficient." *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 503 (D. Nev. 2013) (internal citations omitted). Rimini's complaints about the cost and burden of compliance with discovery requests that Oracle has *already served* are not "particular" or "specific" to the relief that Rimini seeks, which targets discovery that Oracle has *not yet served*, regardless of whether its subject matter be Rimini's proposed new claims, Rimini's newly-revealed post-injunction conduct, or other recent case developments. Rimini is not entitled to the sweeping prospective relief that it requests.

Last, Rimini's request is inappropriate in light of its pending motion to amend its complaint. Rimini cites to no case law that permits one party to expand the scope of its pleadings while preventing an opposing party from taking discovery relevant to those pleadings. To the contrary, in the Ninth Circuit, discovery has been permitted in excess of previously agreed limits by a party who propounded certain discovery after having represented that it would need no new discovery of that type when moving to amend its own claims. *See In re Google Adwords Litig.*, Case No. 5:08-cv-3369, 2011 WL 1226101 at *1 & n.1 (N.D. Cal. Apr. 1, 2011). Oracle's future requests for production will not exceed any relevant limit, and at least may be in response to Rimini's proposed amendment, rather than Oracle's. Rimini may not immunize its proposed new claims from relevant discovery.

If Rimini believes any future requests for production served by Oracle to be objectionable, it may seek relief under the Federal Rules, and has shown itself fully capable of pursuing these means.[13] But Rimini should not be permitted to change the rules and cut off future requests that have not even been served, especially where the scope of this case may change or when new relevant categories of documents may still be discovered.

[13] If Oracle were requesting production of "any material" related to "Rimini's entire business model" (a quote that Rimini falsely assigns to Oracle's Motion to Compel, ECF No. 318 at 2), then, procedurally, Rimini should seek relief as to that particular document request.

2. Rimini is not unduly burdened by Oracle's requests

Rimini gives a misleading account of the history of discovery and the supposed burdens it face. Rimini seeks to overwhelm the Court with eye-catching statistics about the documents and pages it has produced, but omits key details.

First, Rimini's production to date, by volume, is largely a production of copies of Oracle software and support materials (including derivative works created therefrom). Just as in *Rimini I*, Rimini has copied many terabytes' worth of Oracle's software and support materials during the relevant time period for *Rimini II*. For Rimini to have copied a volume of Oracle's copyrighted material equivalent to the text of "the full printed collection of the Library of Congress," *see supra*, n.7, is significant, and troubling. But it is not a surprise: more than ten years ago, Rimini was already planning for capacity to download *more than three terabytes* of infringing copies of just one of the Oracle product lines at issue in this case. *See* Decl. of Thomas S. Hixson, ¶ 3 & Ex. A (*Rimini I* Pltfs.' Trial Ex. 6). To complain when forced to produce these copies, which Oracle alleges are infringing, is "unbridled" chutzpah. That Rimini is smaller than Oracle is of no moment. Regardless of its size, Rimini is a proven infringer that now seeks a declaratory judgment that its current process no longer infringe. Broad discovery into Rimini's documents is appropriate where the Parties agree that Rimini has engaged in massive copying, but disagree as to whether that copying was legal.

Second, Rimini mischaracterizes its burden in producing custodial documents. The Parties have put in place a technology-assisted review protocol that substantially reduces Rimini's burden as to custodial productions. *See* ECF No. 106, Ex. A (Joint Proposal for Technology-Assisted Review (TAR) of Custodial Documents in *Rimini II*) ("TAR Protocol"). As to the millions of documents that it has already produced, the TAR Protocol permitted Rimini to review a sample of a few thousand documents, train a computer model, and then produce custodial documents (up to and potentially including all custodial documents that it has produced to date) without any responsiveness review.[14] The size of the sample does not depend on the

[14] To deem production under the TAR Protocol complete, each Party must review another sample of documents (again, likely to be only a few thousand documents).

number of RFPs at issue. In other words, as to custodial documents, Rimini's suggestion that each additional RFP served by Oracle causes Rimini to undertake some substantial increment of additional work is inaccurate.

Third, Rimini identifies a few examples of requests that it deems to be overlapping or, in one case, duplicative. As to the former, Rimini's pattern of refusing to produce relevant documents, *see, e.g.*, Oracle's Motion to Compel, ECF No. 318, has led Oracle to ask for documents in both broad and targeted requests. As to the latter, Oracle's RFPs 213 and 223 (to which Rimini has not yet responded) are inadvertent duplicates, presented in the same document on the same day.[15] Neither counsels in favor of preventing Oracle from making future discovery requests.[16]

Rimini has a long history of "engag[ing] in discovery delays and other litigation tactics" in an effort to prevent Oracle from obtaining the discovery it needs. *Oracle v. Rimini*, Case No. 2:10-cv-0106 (D. Nev.) ("*Rimini I*"), ECF No. 1049 at 11. Rimini's current effort to reverse a stipulation entered at the beginning of discovery in hopes of obtaining strategic advantage is simply more of the same. Oracle respectfully requests that the Court reject Rimini's proposal to limit Oracle's future requests for production.

[15] Oracle will withdraw RFP 223 now that the error has been brought to Oracle's attention. Oracle also notes that a duplicate RFP, while unfortunate, does not create any additional burden on Rimini.

[16] While Oracle's interrogatories are irrelevant to Rimini's request for relief, Oracle notes that Rimini's suggestion of "thousands" of hours spent responding to discovery is unsupported in the record. The only record of a response by Rimini to an interrogatory that required more than one hundred hours to complete relates to Interrogatory No. 3, as to which Oracle's motions to compel have been granted multiple times. *See, e.g.*, Joint Status Report, ECF No. 215 at 5-6.

DATED: December 12, 2016

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Eric D. Vandevelde
Eric D. Vandevelde
Attorneys for Plaintiff and Counterdefendant Rimini Street, Inc. and Counterdefendant Seth Ravin

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Thomas S. Hixson
Thomas S. Hixson
Attorneys for Counterclaimant Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corporation

ATTESTATION OF FILER

The signatories to this document are Eric D. Vandevelde and me, and I have obtained Mr. Vandevelde's concurrence to file this document on his behalf.

DATED: December 12, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Thomas S. Hixson
Thomas S. Hixson
Attorneys for Counterclaimant Oracle America, Inc. and Defendant and Counterclaimant Oracle International Corporation